

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**CONTINENTAL RELOCATION, INC.,
AND ASHAF SHAMI,**

Respondents

**Docket No. FMCSA-2010-0158¹
(Eastern Service Center)**

FINAL ORDER

1. Background

On March 24, 2010, the New Jersey Division Administrator of the Federal Motor Carrier Safety Administration (FMCSA) issued a Notice of Claim (NOC) against Respondents Continental Relocation, Inc. (Continental) and Ashaf Shami (President of Continental), following a compliance review of Continental conducted on January 26, 2010.² The NOC charged Respondents with: (1) one violation of 49 CFR 387.301(a), failing to file evidence of public liability insurance with FMCSA, with a proposed civil penalty of \$1,100; (2) one violation of 49 CFR 387.301(b), failing to file evidence of cargo insurance with FMCSA, with a proposed civil penalty of \$1,100; and (3) one violation of 49 CFR 392.9a(a), operating a motor vehicle providing transportation requiring operating

¹ The previous case number was NJ-2010-0120-US0622.

² Exhibit A to Field Administrator's Motion for Default and Objection to Respondent's Request for Hearing (hereafter Motion for Default). The NOC charged both the motor carrier and its President, Mr. Ashami, with joint and severally liability for the violations and the civil penalty.

authority without the required operating authority, with a proposed civil penalty of \$25,000.³

The NOC proposed a total civil penalty of \$27, 200.

After Respondents failed to respond to the NOC, the FMCSA's Field Administrator for the Eastern Service Center (Claimant) served a Notice of Default and Final Agency Order (NDFAO) on April 29, 2010.⁴ The NDFAO advised Respondents that the NOC would become the Final Agency Order in this proceeding effective May 4, 2010, with the civil penalty immediately due and payable on that date.

Respondents replied to the NOC on May 4, 2010. For each of the violations, they stated the following:

CONTINENTAL denies this allegation as not supported by the facts, law, or evidence and asserts the following affirmative defenses. (1) The FMCSA has not correctly interpreted the law in regard to this allegation; as such no violation has occurred; (2) The FMCSA has presented no evidence or facts to support this allegation; as such no violation has occurred; (3) All alleged violations were charged in error.⁵

Respondents requested that Claimant produce all evidence underlying the charges and requested a formal hearing.

On May 25, 2010, Claimant objected to Respondents' request for a hearing and moved for entry of an order of default declaring the NOC, including the civil penalty, as the final order in the proceeding. Claimant's objection and motion were based on the argument that Respondents' reply to the NOC was not timely filed in accordance with the Agency's Rules of Practice. Respondents did not reply to the Motion.

³ Because the transportation in question involved household goods, the NOC proposed the minimum statutory penalty provided in 49 U.S.C. § 14901(c)(3).

⁴ Exhibit B to Motion for Default.

⁵ Exhibit C to Motion for Default.

2. Decision

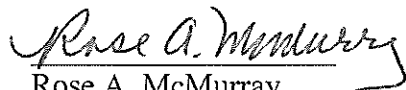
Under § 386.14(a) of the Agency's Rules of Practice, a respondent must serve a written reply to an NOC within 30 days following service of the NOC. Respondents were thus required to serve their reply to the NOC by no later than April 29, 2010. This date was calculated by adding 30 days to the March 24, 2010 service date of the NOC and an additional five days because the NOC was served by mail.⁶

As Claimant noted, the time limit for replying to an NOC is jurisdictional and may only be modified if a respondent requests, and is granted, an extension of time. Because Respondents did not request an extension of time and did not file a timely reply under § 386.14(a), they defaulted. Claimant's Motion for Default is granted.

THEREFORE, *It Is Hereby Ordered That*, Respondents pay to the Field Administrator for the Eastern Service Center, within 30 days of the service date of this Final Order, a total civil penalty of \$27,200 for three violations of the Federal Motor Carrier Safety Regulations. Payment may be made electronically through FMCSA's registration site at <http://safer.fmcsa.dot.gov> by selecting "Online Fine Payment" under the "FMCSA Services" category. In the alternative, payment by cashier's check, certified check, or money order may be remitted to the Claimant at the address shown in

⁶ See 49 CFR 386.8(c)(3). Although the NDFAO was issued one day prematurely, this was harmless error because Respondents did not serve a reply on April 29. *See In the Matter of Titan Moving and Storage, Inc., dba Deathwish Piano Movers*, Docket No. FMCSA-2008-0387, Order Denying Petition for Reconsideration, January 7, 2010.

the Certificate of Service.⁷



Rose A. McMurray

Assistant Administrator

Federal Motor Carrier Safety Administration

8.5.10

Date

⁷ Pursuant to 49 CFR 386.64, a petition for reconsideration may be submitted within 20 days of the issuance of this Final Order.

CERTIFICATE OF SERVICE

This is to certify that on this 6 day of August, 2010, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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